

San José Municipal Code

Title 12 ETHICS PROVISIONS

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Chapter 12.02 GENERAL PROVISIONS AND DEFINITIONS

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12.02.010 Intent.

A. This title is intended to implement Charter Section 607. It is a compilation of all city ordinances which directly regulate campaign conduct and ethics.

B. This title is intended to apply equally to the redevelopment agency of the city of San José and to any joint powers or other subsidiary agency of the city.

C. The provisions of this title are supplemented by city policies and administrative regulations. They are in addition to all applicable state and federal laws.

D. All city officials, including candidates for city office, members of all city and agency boards, commissions and committees, all city and agency employees and all persons doing business with the city or agency are expected to fully comply with all applicable provisions of this title as well as all other city ethics policies and regulations.

(Ords. 24499, 26440.)

12.02.020 Words and phrases.

Words and phrases used in this title shall have the meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974 as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

(Ords. 24499, 26440.)

12.02.030 Client.

A. “Client” means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed.

B. An individual member of an organization shall not be deemed to be a “client,” for purposes of this chapter, solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

(Ords. 24499, 26440.)

12.02.040 Contractor.

“Contractor” means any party to an agreement in which the value of the consideration exceeds one thousand dollars; and:

A. The city is a party; or

B. The redevelopment agency is a party; or

C. The agreement or its effectiveness is in any way dependent or conditioned upon approval by the city council or redevelopment agency board or any board or commission, officer or employee of the city or the agency.

(Ords. 24499, 26440.)

12.02.050 Designated employees.

“Designated employees” means city and redevelopment agency employees who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a San José or redevelopment agency conflict of interest code to file financial interest disclosure statements.

(Ords. 24499, 26440.)

12.02.060 Local governmental lobbyist.

A. “Local governmental lobbyist” means any individual who receives two thousand dollars or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are to communicate directly or

through his or her agents with any public official, officer or designated employee for the purpose of influencing any governmental, legislative or administrative action of the city or the San José Redevelopment Agency.

B. No person is a local governmental lobbyist by reason of activities described in Section 12.12.030.

(Ords. 24499, 25447, 26440.)

12.02.070 Governmental action.

“Governmental action” means any administrative or legislative action of the city of San José and the redevelopment agency other than an action which is ministerial in nature.

(Ords. 24499, 26440.)

12.02.080 Payment.

“Payment” means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

(Ords. 24499, 26440.)

12.02.090 Person doing business with the city.

A. “Person doing business with the city” means any person whose financial interests are materially affected by governmental action as defined by Section 12.02.070. It includes persons currently doing business with the city or the redevelopment agency, planning to do business with the city or agency, or having done business with the city or agency within two years.

B. For purposes of this chapter, a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by city or agency officers or employees.

(Ords. 24499, 26440.)

12.02.100 Public official.

“Public official” means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the state of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

(Ords. 24499, 26440.)

Chapter 12.04 SAN JOSÉ ELECTIONS COMMISSION

Parts:

- 1 Duties and Responsibilities**
- 2 Enforcement**

Part 1

DUTIES AND RESPONSIBILITIES

Sections:

12.04.025 **San José elections commission.**

12.04.050 **Meetings.**

12.04.060 **Quorum.**

12.04.070 **Duties and responsibilities.**

12.04.080 **Investigations.**

12.04.085 **Subpoena power.**

12.04.025 San José elections commission.

"San José elections commission," also referred to in this title as "elections commission" or "commission" shall mean the established pursuant to the provisions of Part 16 of Chapter 2.08.

(Ords. 25209, 26440, 26976.)

12.04.050 Meetings.

A. The commission shall meet no less than two times during the year of a municipal election. At least one meeting shall be held before the primary election and one meeting shall be held before the general election.

B. The commission shall meet at other times as set forth in the resolution of bylaws of the commission or as called by the chair. Deliberations and meetings of the commission shall be open to the public in accordance with the Ralph M. Brown Act (Gov. Code, section 54950 et seq.)

C. The office of the city clerk shall staff such meetings.

(Ords. 24499, 25525, 26440, 26976.)

12.04.060 Quorum.

A. Three members shall constitute a quorum, and the concurring vote of at least three members shall be required to take any action.

B. The votes of at least three members of the commission who concurred in the finding of a violation of this title are required to impose any order or penalty.

(Ords. 24499, 25525, 26440, 26976.)

12.04.070 Duties and responsibilities.

The commission shall have the following duties and responsibilities:

A. Monitor compliance with all campaign and ethics ordinances in this title.

B. Review and investigate allegations of violations of this title and take enforcement action where appropriate.

C. Make recommendations to the city council with regard to campaign and ethics regulations and policies.

D. Settle challenges to commission decisions in accordance with Section 4.24.050 of Title 4 of this code.

(Ords. 24499, 25525, 26440, 26976.)

12.04.080 Investigations.

A. The city council shall adopt, by resolution, regulations and procedures for investigations and hearings to be conducted by the commission.

B. The commission shall have the authority to investigate complaints alleging violations of this title, in accordance with the regulations and procedures adopted by resolution of the city council.

C. A complaint filed with the commission may be investigated only if the complaint identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant a formal investigation.

D. The council shall retain an independent and neutral evaluator, selected by the commission, to review and investigate complaints and to make recommendations to the commission. The council shall appropriate funds anticipated to be needed to fund the evaluator for a period of two years.

E. Except as provided in F. below, the evaluator shall refer any complaint where the respondent, is a classified or unclassified employee appointed by a city council appointee to the appointing authority for investigation and action. The elections commission shall take no further action on the complaint with regard to the employee.

F. Any city employee who is a candidate for city office shall be treated as any other candidate for purposes of Chapter 12.06.

G. The city attorney's office may provide legal advice to the commission related to noncomplaint matters or general interpretations of the municipal code or relevant state or federal law, but shall not participate in investigations or reviews of complaints.

(Ords. 24499, 25525, 26440, 26976.)

12.04.085 Subpoena power.

A. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items.

B. The chair of the commission, after consultation with the evaluator, shall have the power to subpoena witnesses and to compel their attendance and testimony, administer oaths and affirmations at a scheduled commission hearing or meeting, and to require by subpoena the production of any books, papers, records or other items.

C. The subpoena power shall be used only after a finding by the commission that the information or testimony is essential for a determination and material to its duties and/or exercise of its powers and that good faith efforts to acquire relevant information have failed.

(Ords. 25525, 26440, 26976, 27339.)

Part 2 ENFORCEMENT

Sections:

[12.04.100](#) Findings.

[12.04.110](#) Civil penalties.

[12.04.120](#) Campaign contribution violations.

- [12.04.130](#) **Excess contributions - Candidate.**
- [12.04.140](#) **Excess contributions - Officeholder.**
- [12.04.150](#) **Precandidacy contributions.**
- [12.04.160](#) **Violations of this title.**
- [12.04.170](#) **Subject to discipline.**
- [12.04.180](#) **Additional sanctions - Revolving door violations.**

12.04.100 Findings.

- A. The commission, by resolution, shall issue formal findings based on a preponderance of the evidence from the entire record of the commission's proceedings.
- B. No finding of violation shall be made unless the person alleged to have committed the violation has been notified of the alleged violation and provided a copy of the regulations and procedures of the commission.
- C. If the elections commission finds a violation of this title, the commission may:
 - 1. Find mitigating circumstances and take no further action;
 - 2. Issue a public statement or reprimand; or
 - 3. Impose a civil penalty in accordance with this title.

(Ords. 24499, 25525, 26440, 26976.)

12.04.110 Civil penalties.

- A. Civil penalties shall be imposed by resolution of the commission.
- B. Except as otherwise specified in this Title 12, the commission may impose penalties of up to five thousand dollars for each violation.
- C. If any civil penalty imposed by the commission is not timely paid, the city clerk shall refer the debt to the director of finance for collection.

(Ords. 25525, 26440, 26976, 27291.)

12.04.120 Campaign contribution violations.

- A. In determining if penalties should be imposed for violations of Chapter 12.06 and the amount of any such penalties, the commission shall consider all the relevant circumstances surrounding the case including:
 - 1. The severity of the violation;
 - 2. The presence or absence of any intention to conceal, deceive, or mislead;
 - 3. Whether the violation was deliberate, negligent or inadvertent;
 - 4. Whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for this chapter;
 - 5. Whether the respondent has a prior record of violations of city law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
 - 6. The degree to which the respondent cooperated with the investigation;

7. Whether or not corrective actions were taken, if appropriate, in accordance with the provisions of this chapter.

B. The amount of the penalties, other than for a late contribution report pursuant to Section 12.06.910 shall be up to five thousand dollars and/or the value of any contribution(s) or gift received in violation of Chapter 12.06.

C. A candidate or committee failing to file a late contribution report pursuant to Section 12.06.910 shall be required to pay a penalty in an amount equal to the unreported contribution, but not less than one thousand dollars.

D. The city clerk or city attorney may put persons on notice of a potential violation of the requirements of Chapter 12.06, whether or not a complaint is filed with the commission.

(Ords. 24499, 24733, 25525, 26440, 26976, 27291.)

12.04.130 Excess contributions - Candidate.

No person shall be found in violation of Sections 12.06.270 or 12.06.280 of this chapter for having made, solicited or accepted any contribution in excess of the limits prescribed by said sections, provided that such excess contribution was made, solicited or accepted at a time when the person was a candidate for the elective city office subject to the limitation, and as soon as reasonably possible and in no event more than thirty days after his or her discovery of the excess contribution either:

A. The amount of contribution in excess of the prescribed limitation was refunded to the donor; or

B. The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 25134, 26440.)

12.04.140 Excess contributions - Officeholder.

No person shall be found in violation of Section 12.06.820 or 12.06.830 of this chapter for having made or accepted any contribution in excess of the limits prescribed by such sections, provided that:

A. The amount of contribution in excess of the prescribed limitations shall have been refunded to the donor within thirty days of receipt by the committee; or

B. The amount of contribution in excess of the prescribed limits shall have been donated to the general fund of the city of San José within thirty days of receipt.

(Ords. 25134, 26440.)

12.04.150 Precandidacy contributions.

No person shall be found in violation of this chapter for having made, solicited or accepted any contribution in excess of the limits prescribed herein, provided that the excess contribution was made, solicited or accepted at a time when the person was not a candidate for the elective city office subject to the limitation, and within thirty days of his or her becoming a candidate either:

A. The amount of contribution in excess of the prescribed limitation was refunded to the donor; or

B. The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 24577, 26440.)

12.04.160 Violations of this title.

Enforcement of this title shall not be governed by Section 1.08.020 of this code unless such violation constitutes a separate violation of another section or provision of this code or of another applicable provision of law.

(Ords. 24499, 25525, 26440.)

12.04.170 Subject to discipline.

Any violation of this title by an officer or employee of the city or redevelopment agency may be deemed a failure to perform the duties under or observe the rules and regulations of the department, office, board or commission of such officer or employee within the meaning of the civil service ordinance and other city and agency rules and regulations.

(Ords. 24499, 26440.)

12.04.180 Additional sanctions - Revolving door violations.

In addition to any other remedy provided in this code, the following sanctions shall also apply to any violations of Chapter 12.10 where appropriate:

A. Upon the petition of any interested person or party, a court or the presiding officer of any proceeding described in Section 12.10.020 may, after notice and an opportunity for hearing, exclude any person found to be in violation of Chapter 12.10 from further participation, or from assisting or counseling any other participant in the matter then pending before such court or presiding officer.

B. City shall be entitled to recover from any former city or redevelopment agency officer or designated employee the monetary value of any compensation or thing of value provided to such person in violation of the provisions of Chapter 12.10.

(Ords. 24499, 26440.)

Chapter 12.05 ELECTIONS

Sections:

- [12.05.010](#) Superseding conflicting state laws.
- [12.05.020](#) Scheduling of city municipal elections.
- [12.05.030](#) Time for notice of election.
- [12.05.040](#) Nomination petitions.
- [12.05.050](#) Circulation of nomination petitions.
- [12.05.060](#) Nomination papers and filing deadline.
- [12.05.070](#) Number of nomination papers.

12.05.010 Superseding conflicting state laws.

In accordance with Charter Section 1602, the provisions of this chapter supersede any conflicting provisions in the California Elections or Government Codes.

(Ord. 25214.)

12.05.020 Scheduling of city municipal elections.

A. A regular municipal election which is a regularly scheduled primary election shall be held on the same date that the state of California holds its direct primary election.

B. A regular municipal election which is a run-off municipal election shall be held on the same date that the state of California holds its statewide general election.

(Ord. 25214.)

12.05.030 Time for notice of election.

The city clerk shall publish a notice of the city election which meets the standards of Section 6061 of the California Government Code, not earlier than the one hundred thirteenth nor later than the eighty- eighth day before any city municipal election to fill offices.

(Ord. 25214.)

12.05.040 Nomination petitions.

A. Each candidate for city elective office shall be nominated by not less than fifty registered voters in the city. Not more than sixty signatures of registered voters shall be accepted and counted.

B. Voters signing nomination papers for the office of member of the council, except the mayor, shall be residents of the district by which the member is to be elected.

C. Voters signing nomination papers for the office of mayor shall be residents of the city and may reside anywhere in the city.

(Ord. 25214.)

12.05.050 Circulation of nomination petitions.

A. Any person who circulates a nomination paper for the office of member of the council, except mayor, shall be registered to vote at the election in the district by which the member is to be elected.

B. Persons circulating nomination papers for the office of mayor shall be registered to vote at the election in any part of the city.

(Ord. 25214.)

12.05.060 Nomination papers and filing deadline.

A. The voters may nominate candidates for election by signing a nomination paper not earlier than the one hundred thirteenth day nor later than twelve noon on the eighty-eighth day before a city municipal election.

B. All nomination papers shall be filed with the city clerk not later than twelve noon on the eighty- eighth day before the city municipal election, except as provided in subsection C. below.

C. If nomination papers for an eligible incumbent elective officer of the city are not filed by

twelve noon on the eighty-eighth day before the election, nomination papers for candidates other than the incumbent elective officer for such elective office may be filed with the city clerk until twelve noon on the eighty-third day before the election.

(Ord. 25214.)

12.05.070 Number of nomination papers.

More than one nomination paper may be circulated and filed for a candidate.

(Ord. 25214.)

Chapter 12.06 MUNICIPAL CAMPAIGN AND OFFICEHOLDER CONTRIBUTIONS

Parts:

- 1 Definitions**
- 2 Campaign Contributions**
- 3 Independent Committees**
- 4 Transfer of Funds**
- 5 Voluntary Spending Limits Program**
- 6 Special Municipal Elections**
- 7 Debt Retirement, and Surplus Campaign Funds**
- 8 Officeholder Accounts**
- 9 Campaign Disclosure**

Part 1

DEFINITIONS

Sections:

- 12.06.010 Definitions.**
- 12.06.020 Business entity.**
- 12.06.030 Candidate.**
- 12.06.040 Committee.**
- 12.06.050 Contribution.**
- 12.06.060 Controlled committee.**
- 12.06.080 Election.**
- 12.06.110 Fair political practices commission.**
- 12.06.120 Independent committee.**
- 12.06.130 Independent expenditure.**
- 12.06.150 Officeholder contributions.**
- 12.06.160 Person.**

12.06.170 Political reform act.

12.06.180 Statement of intention to be a candidate.

12.06.010 Definitions.

The following definitions used in this chapter shall have the meanings set forth below. Except as otherwise provided here, the terms and provisions of this chapter shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (Government Code Section 81000 et seq.) and the regulations of the California Fair Political Practices Commission, as amended.

(Ords. 24466, 24577, 25257, 26440, 27291.)

12.06.020 Business entity.

“Business entity” shall mean any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

(Ords. 24499, 24577, 25257, 26440.)

12.06.030 Candidate.

“Candidate” shall mean an individual who:

- A. Is listed on the ballot; or
- B. Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective city office; or
- C. Has given his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective city office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy; or
- D. Has filed a statement of intention to be a candidate with the secretary of state.

(Ords. 24499, 24577, 25257, 25525, 26440.)

12.06.040 Committee.

“Committee” shall mean any person who, directly or indirectly, receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters in a municipal election for or against the nomination or election of one or more candidates if:

- A. Contributions received total one thousand dollars or more in any calendar year; or
- B. Independent expenditures total one thousand dollars or more in a calendar year; or
- C. Contributions made to or at the behest of candidates and committees total ten thousand dollars or more in a calendar year.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.050 Contribution.

A. “Contribution” shall mean:

1. Any payment, loan, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

2. An expenditure benefiting a candidate or committee made at the behest of a candidate, committee or elected officeholder is a contribution to the candidate, committee or elected officeholder unless full and adequate consideration is received for making the expenditure.

3. Contributions include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person, if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; and the transfer of anything of value.

B. Volunteer personal services; payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her; or independent expenditures made by independent committees are not deemed to be contributions for purposes of this chapter.

(Ords. 24499, 24577, 25257, 26440.)

12.06.060 Controlled committee.

“Controlled committee” shall mean a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if such candidate, his or her agent, or any other committee such candidate controls, has a significant influence on the actions or decisions of the committee.

(Ords. 24499, 24577, 25257, 26440.)

12.06.080 Election.

“Election” shall mean any regularly scheduled municipal or special municipal election. Recall elections are not considered elections for purposes of this chapter.

(Ords. 24499, 24577, 25257, 26440.)

12.06.110 Fair political practices commission.

“Fair political practices commission” is the body charged with administering the Political Reform Act and adopting implementing regulations.

(Ords. 24499, 24577, 25257, 26440.)

12.06.120 Independent committee.

“Independent committee” shall mean all committees other than controlled committees.

(Ords. 24499, 24577, 25257, 26440.)

12.06.130 Independent expenditure.

A. "Independent expenditure" shall mean an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to or at the behest of the affected candidate or committee. An expenditure that is made to or at the behest of a candidate or controlled committee is not an "independent expenditure".

B. Any expenditure in aid or in opposition to a council or mayoral candidate which is not an "independent expenditure" is deemed to be a contribution to that candidate, subject to the limitations of this chapter.

(Ords. 24499, 24577, 25257, 26440, 27291.)

12.06.150 Officeholder contributions.

"Officeholder contributions" shall mean funds collected by city officeholders for the limited purposes set forth in Part 7 of this chapter. Officeholder funds are not campaign funds for purposes of this title.

(Ords. 24499, 24577, 25257, 26440.)

12.06.160 Person.

"Person," for purposes of this chapter, shall include an individual, business entity, foundation, organization, committee or association, nonprofit corporation, and any other organization or group of people acting in concert.

(Ords. 24499, 24577, 25257, 26440.)

12.06.170 Political reform act.

"Political reform act" is Government Code Section 81000 et seq., as amended.

(Ords. 24499, 24577, 25257, 26440.)

12.06.180 Statement of intention to be a candidate.

"Statement of intention to be a candidate" is a written statement, filed with secretary of state in accordance with Government Code Section 85200 and regulations thereunder, declaring intention to be a candidate for a specific elective city office.

(Ords. 24499, 24577, 25257, 25525, 26440.)

Part 2

CAMPAIGN CONTRIBUTIONS

Sections:

- [12.06.200](#) Intent and purpose.
- [12.06.210](#) Campaign contribution limitations.
- [12.06.220](#) Applicability to agents.
- [12.06.230](#) Anonymous contributions.
- [12.06.235](#) Information needed prior to deposit.

- 12.06.240** Contributions through other persons prohibited.
- 12.06.250** Contributions by certain business entities prohibited.
- 12.06.260** Prohibited contributions - Cardrooms.
- 12.06.270** Contribution limitations to city council candidates.
- 12.06.280** Contribution limitations to mayoral candidates.
- 12.06.290** Campaign contribution collection period.
- 12.06.295** Deposit of personal funds into campaign bank accounts.

12.06.200 Intent and purpose.

It is the intent of the city council of the city of San José in enacting this chapter to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials. In order to achieve this purpose it is not necessary to, nor is it the city council's intent to, impose limitations on individuals and committees whose sole objective is the passage or defeat of ballot measures.

(Ords. 24499, 24577, 25257, 26440.)

12.06.210 Campaign contribution limitations.

A. The total campaign contribution made by any person to any councilmember, council candidate and any controlled committee of that candidate may not exceed:

1. One hundred dollars for the primary election;
2. One hundred dollars for the general election, if any;
3. One hundred dollars for any special election.

B. The total campaign contribution made by any person to any mayor, mayoral candidate and any controlled committee of the candidate may not exceed:

1. Two hundred fifty dollars for the primary election;
2. Two hundred fifty dollars for the general election, if any;
3. Two hundred fifty dollars for any special election.

C. If the candidate voluntarily elects to participate in the voluntary campaign expenditure limitation program, the alternative campaign contribution limitations set forth in Part 5 shall apply in lieu of subsection A. and B.

(Ords. 24499, 24577, 24845, 25257, 25445, 26440.)

12.06.220 Applicability to agents.

A. "Agent" shall mean any person who has express or implied authority to make or to authorize the making of expenditures on behalf of a candidate, or who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. An "agent" is also any person who is serving or has served in an advisory, decision-making, or strategic role with a candidate's campaign, with or without compensation, where that person's duties and/or actions reflect or require direct knowledge of the candidate's campaign strategy, plans and needs.

B. The prohibitions and requirements of this chapter applicable to a candidate shall also apply to the candidate's agent.

(Ords. 24499, 24577, 25257, 26440, 27291.)

12.06.230 Anonymous contributions.

A. No person shall make nor shall any person solicit or accept any anonymous contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of or opposition to a candidacy.

B. All anonymous contributions shall be surrendered to the director of finance for deposit in the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 24499, 24577, 25257, 26440.)

12.06.235 Information needed prior to deposit.

No contribution of any amount shall be deposited into a campaign account unless the name, address, occupation and employer of the contributor is on file in the written records of the candidate receiving the contribution.

(Ords. 25257, 26440.)

12.06.240 Contributions through other persons prohibited.

In applying the limitations set forth in this chapter to the contributions of a person, each contribution made under any of the following circumstances shall be deemed to have been made by the person and shall be included in determining whether the applicable limitation for such person has been exceeded:

A. A contribution by an employee over whom the person exercises control as a supervisor or as an owner of the business entity for which the employee works, where the contribution was coerced by the person or made at his or her instigation from monies given or promised to the employee as a gift, bonus or other form of reimbursement for the contribution.

B. A contribution of a spouse or child of the person where the contribution is coerced by the person or made from monies given or promised by the person in instigation of the contribution.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.250 Contributions by certain business entities prohibited.

Contributions by business entities shall be limited in accordance with the Political Reform Act as amended.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.260 Prohibited contributions - Cardrooms.

A. No cardroom, cardroom owner, officer of a cardroom, key management employee of a cardroom, spouse of a cardroom owner or spouse of a cardroom officer shall make any contribution under this chapter.

B. Cardroom and cardroom owner are as defined in Section 6.22.020 of Title 6 of this code.

C. A key management employee of a cardroom is any person who has the authority to hire or fire other employees.

(Ords. 24499, 24577, 25257, 26440.)

12.06.270 Contribution limitations to city council candidates.

No person, other than the candidate in aid of himself or herself, shall make nor shall any person solicit or accept any contribution in aid of and/or opposition to the nomination or election of a candidate for city council which will cause the total amount contributed by such person to the candidate and any controlled committee of such candidate to exceed one hundred dollars per election, except as provided in Part 5 of this chapter.

(Ords. 24499, 24577, 25257, 25445, 26440.)

12.06.280 Contribution limitations to mayoral candidates.

No person, other than the candidate in aid of himself or herself, shall make nor shall any person solicit or accept any contribution in aid of and/or opposition to the nomination or election of a candidate for mayor which will cause the total amount contributed by such person to the candidate or any controlled committee of such candidate to exceed two hundred fifty dollars per election, except as provided in Part 5 of this chapter.

(Ords. 24499, 24577, 25257, 25445, 26440.)

12.06.290 Campaign contribution collection period.

A. No person shall solicit or accept any campaign contribution or deposit any contributions for any campaign into any municipal campaign bank account except during the campaign contribution period.

B. The campaign contribution period for the primary municipal election for council or mayor shall:

1. Begin on the one hundred eightieth day before the primary municipal election.
2. End at 5:00 p.m. on the seventeenth day prior to the primary municipal election

C. The campaign contribution period for the run-off municipal election for council or mayor shall:

1. Begin on the day after the primary municipal election for that office.
2. End at 5:00 p.m. on the seventeenth day prior to a run-off municipal election for that office.

D. Any contribution which is received outside of the campaign contribution period for an election shall not be accepted or deposited but shall be returned to the contributor or donor within five business days.

(Ords. 24499, 24577, 25257, 25525, 25942, 26440.)

12.06.295 Deposit of personal funds into campaign bank accounts.

A. A candidate must disclose the source of all personal funds deposited into his or her campaign bank account. If the source of the funds is a loan to the candidate, the name and address of the lender and the terms of the loan must also be disclosed.

B. The information required by subsection A. must be reported, on a form provided by the city clerk, on or before the date of the next pre-election statement which must be filed after the funds are deposited into the campaign bank account.

C. No candidate may deposit personal funds into his or her campaign bank account during the period beginning seven days prior to election day.

D. No candidate shall make loans to his or her own campaign or campaign committee where the outstanding total, at any one point in time, is more than twenty thousand dollars. Nothing in this chapter shall prohibit a candidate from making unlimited contributions to his or her own campaign.

(Ords. 24499, 24577, 25257, 26440.)

Part 3 INDEPENDENT COMMITTEES

Sections:

12.06.310 Contribution limitations to independent committees.

12.06.320 Contributions and expenditures by independent committees.

12.06.330 Contribution period for independent committees.

12.06.310 Contribution limitations to independent committees.

A. No person shall make nor shall any person accept any contribution to or on behalf of an independent committee expending funds or making contributions in aid of and/or opposition to the nomination or election of a candidate for city council or mayor which will cause the total amount contributed by such person to such independent committee to exceed two hundred fifty dollars per election.

B. Independent committees contributing to election campaigns in addition to city of San José council or mayoral campaigns shall segregate contributions received and contributions or expenditures made for the purpose of influencing such San José elections from all other contributions or expenditures. Where an independent committee has segregated such contributions and expenditures for such city elections, contributors to that committee may contribute more than two hundred fifty dollars so long as no portion of the contribution in excess of two hundred fifty dollars is used to influence San José council or mayoral elections.

C. This section is not intended to prohibit or regulate contributions to independent committees to the extent such contributions are used on behalf of or in opposition to candidates for offices other than mayoral or council offices of the city of San José.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.320 Contributions and expenditures by independent committees.

A. Independent committees are “persons” for purposes of the contribution limitations to city council and mayoral candidates. Any expenditure by an independent committee in aid of or in opposition to a council or mayoral candidate which is not an “independent expenditure” is deemed to be a contribution to that candidate, subject to the limitations of this chapter.

B. Each independent committee making contributions or independent expenditures in a council or mayoral election which does not participate in elections other than for city offices shall file the reporting statements required by Section 12.06.910. For each expenditure or contribution, the committee shall report what amount or portion was of benefit to a particular candidate.

(Ords. 24499, 24577, 25257, 26440.)

12.06.330 Contribution period for independent committees.

Contributions to independent committees for the purpose of supporting or opposing

candidates for city office shall be subject to the campaign collection period set forth in Section 12.06.290.

(Ords. 25447, 26440.)

Part 4

TRANSFER OF FUNDS

Sections:

[12.06.410](#) **Prohibition on transfer of funds.**

[12.06.420](#) **Disclosure - Transfers to a candidate's own city and noncity campaign.**

[12.06.430](#) **Transfer of city officerholder funds.**

12.06.410 Prohibition on transfer of funds.

A. The transfer of any city campaign funds to any other person's city campaign or officeholder fund is prohibited.

B. The transfer of any city campaign, or officeholder contribution to any other candidate's noncity campaign fund is prohibited.

(Ords. 24499, 24577, 25257, 26440.)

12.06.420 Disclosure - Transfers to a candidate's own city and noncity campaign.

A. No contribution collected for any city campaign fund may be transferred to another campaign fund of the candidate, unless a written disclosure appeared on all materials printed by the campaign committee during the campaign, which informed potential donors that such contributions are subject to being transferred to the candidate's own city and noncity campaigns, at any time, at the discretion of the candidate.

B. The disclosure required by this section shall consist of the following statement in fourteen point type: Any contribution to this campaign may be transferred to this candidate's campaign for reelection or another city or noncity campaign at (name of the candidate's) sole discretion.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.430 Transfer of city officerholder funds.

A. The transfer of officeholder funds to be used for any campaign purpose is prohibited.

B. Any officeholder funds which are not utilized for officeholder purposes must be transferred to the general fund of the city of San José or contributed for charitable purposes.

(Ords. 24499, 24577, 25257, 26440.)

Part 5

VOLUNTARY SPENDING LIMITS PROGRAM

Sections:

[12.06.500](#) **Voluntary campaign expenditure limits program.**

[12.06.510](#) **Voluntary campaign expenditure limits.**

[12.06.520](#) **Voluntary campaign expenditure limits - Transfers of campaign funds.**

[12.06.530](#) **Expenditure limits.**

12.06.540 Campaign contribution limits.

12.06.550 Notification to voters.

12.06.560 Expenditure limits tripled.

12.06.500 Voluntary campaign expenditure limits program.

Each candidate participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of the provisions of this chapter.

(Ords. 25445, 26440.)

12.06.510 Voluntary campaign expenditure limits.

A. Each candidate must file an expenditure ceiling statement with the city clerk indicating whether or not he or she will participate in the voluntary campaign expenditure limits program before accepting or receiving any campaign contributions.

B. Each candidate who has filed an expenditure ceiling statement indicating participation in the program shall be subject to the expenditure limits set forth in Section 12.06.530.

C. Any candidate who declined to accept the expenditure ceiling statement in Section 12.06.530 but who, nevertheless, did not exceed the voluntary expenditure limits in the primary election or special primary election may file an amendment to the expenditure ceiling statement, accepting participation in the voluntary campaign expenditure limits program for the general or special run-off election, within fourteen days following the primary or special primary election and receive all the benefits of the program specified in this chapter.

D. Expenditures for purposes of the expenditure limits shall include in-kind or non-monetary contributions.

(Ords. 25445, 25942, 26440.)

12.06.520 Voluntary campaign expenditure limits - Transfers of campaign funds.

A. Campaign funds collected for the primary municipal election or collected for the run-off municipal election by candidates who voluntarily participate in the voluntary campaign expenditure limits program shall not be transferred to any ballot measure committee.

B. Campaign funds collected for the primary municipal election by candidates who voluntarily participate in the voluntary campaign expenditure program shall not be transferred to the candidate's run-off municipal election campaign. Remaining campaign funds after the primary municipal election shall be deemed to be surplus campaign funds and shall be distributed in accordance with the provisions of this chapter.

(Ords. 26024, 26440.)

12.06.530 Expenditure limits.

A. The expenditure limits shall be set at:

1. Seventy five cents per resident of the city for candidates for the office of mayor; and
2. One dollar per resident of the district for candidates for council office.

B. The city council shall adopt an expenditure limits resolution, in advance of each election cycle, specifying the expenditure limits. The expenditure limits shall be based on census data

supplied by the director of the department of planning, building and code enforcement for the city and each council district and adjusted by the percentage increase in residents as determined by population data provided by the state of California, department of finance, city/county population estimates.

C. No candidate who files an expenditure ceiling statement participating in the voluntary campaign expenditure limits program shall make any campaign expenditure above the limits set forth in the expenditure limits resolution.

D. The city council shall review the amount of the expenditure limits set forth in subsection A. above, nine months in advance of each election, to determine if any change is warranted.

(Ords. 25445, 25942, 26440.)

12.06.540 Campaign contribution limits.

Candidates who participate in the voluntary campaign expenditure limits program shall be entitled to collect contributions in the following amounts:

A. The total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate shall not exceed a total of more than two hundred fifty dollars in the aggregate.

B. The total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate shall not exceed a total of more than five hundred dollars in the aggregate.

(Ords. 25445, 26440.)

12.06.550 Notification to voters.

The ballot, ballot pamphlet and sample ballot shall prominently designate those candidates who participate in the program.

(Ords. 25445, 26440.)

12.06.560 Expenditure limits tripled.

Notwithstanding Section 12.06.530.

A. If a candidate who is not participating in the voluntary campaign expenditure limits program receives contributions, has cash on hand, or makes qualified expenditures equal to seventy-five percent or more of the expenditure limits set forth in the expenditure limits resolution adopted pursuant to this part, the expenditure limit shall be tripled.

B. If an independent expenditure committee(s) spend in the aggregate, in support or opposition to a candidate, more than fifty percent of the expenditure limits set forth in the expenditure limits resolution adopted pursuant to this part, the expenditure limit shall be tripled.

(Ords. 25445, 26440.)

Part 6

SPECIAL MUNICIPAL ELECTIONS

Sections:

12.06.600 Special municipal elections.

12.06.610 Campaign contribution collection period - Campaign disclosure.

12.06.620 Voluntary campaign expenditure limits program - Special election.

12.06.600 Special municipal elections.

A. Except as otherwise provided by this Part 6, the provisions of Chapter 12.06 shall apply to special municipal elections. Part 6 of Chapter 12.06 shall only apply to special municipal elections which do not exceed a six-month period from the call of the special municipal election to the date of a special municipal run-off election if any.

B. The prohibition on transfers of any city campaign funds to any other person's city campaign or officeholder fund in Section 12.06.410 shall apply to any special municipal election.

C. The prohibition on transfers of any city campaign funds to any other candidate's noncity campaign fund in Section 12.06.410 shall apply to any special municipal election.

D. The disclosure requirements for transfers of city campaign funds to a candidate's own city and noncity campaign in Section 12.06.420 shall apply to any special municipal election.

(Ords. 26239, 26440.)

12.06.610 Campaign contribution collection period - Campaign disclosure.

A. The campaign contribution collection periods for the special municipal election and a special municipal run-off election shall:

1. Begin on the date that the special municipal election is set by the city council and begin the day after the special municipal election for any run-off election.

2. End at 5:00 p.m. on the seventh day prior to the election and the seventh day prior to any run-off election.

B. Each candidate and each committee shall file, as a public record with the city clerk, cumulative itemized campaign statements completed on campaign statement forms required to be filed by the regulations of the fair political practices commission by no later than the fifth day prior to the special municipal election and the fifth day prior to any special municipal run-off election.

(Ords. 26239, 26440.)

12.06.620 Voluntary campaign expenditure limits program - Special election.

A. Unless otherwise provided in this Part 6, each candidate in any special municipal election participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of this chapter.

B. Campaign funds collected for a special municipal election by candidates including those candidates participating in the voluntary campaign expenditure limits program may be transferred to the candidate's special municipal run-off election campaign.

(Ords. 26239, 26440.)

Part 7

DEBT RETIREMENT, AND SURPLUS CAMPAIGN FUNDS

Sections:

12.06.710 Deadline for debt retirement.

12.06.720 Surplus campaign funds.

12.06.710 Deadline for debt retirement.

A. No money can be collected for debt retirement after the end of the campaign contribution collection period as set forth in Section 12.06.290.

B. A candidate must retire all campaign-related debts, including loans, within six months after the date of the election.

C. A campaign-related debt, including any loan, which remains unpaid more than six months after the election is deemed to have been a campaign contribution which was accepted at the time the debt was incurred.

D. It is a violation of this section to forgive all or part of a loan or debt which is owed to the person by a candidate and which exceeds the applicable contribution limitations. Forgiveness of a loan or debt shall not be deemed to include the failure to collect the loan or debt where there have been substantial attempts, in good faith, to collect the monies owed and such efforts have proved unsuccessful. In such case, a candidate is not exonerated from violations of this chapter if an outstanding loan or debt exceeds the contribution limitations.

(Ords. 24499, 24577, 25257, 26440.)

12.06.720 Surplus campaign funds.

Any remaining campaign funds in excess of expenses incurred for allowable expenses as specified under the Political Reform Act, shall be deemed to be surplus campaign funds and shall be distributed within ninety days after withdrawal, defeat, or election to office in the following manner:

A. No more than ten thousand dollars may be deposited in the candidate's officeholder account; except that no such surplus campaign funds may be deposited into the officeholder account within sixty days immediately following the election to office.

B. Any remaining surplus funds shall be returned to the contributors on a pro rata basis, or turned over to the general fund.

(Ords. 25257, 26440.)

Part 8

OFFICEHOLDER ACCOUNTS

Sections:

12.06.810 Intent.

12.06.820 Mayor's officeholder accounts.

12.06.830 Mayor's officeholder account uses.

12.06.840 Councilmember officeholder accounts.

12.06.850 Mayor and councilmember officeholder account freeze period.

12.06.860 Councilmember officeholder account uses.

12.06.870 Restrictions on officeholder accounts.

12.06.880 Prohibition on other officeholder accounts.

12.06.890 Officeholder disclosure.

12.06.810 Intent.

It is the intent of the city council of the city of San José in enacting this part to place limits on the amount individuals may contribute to officeholders in order to prevent the perception by the public that such contributions may give rise to undue or improper influence over elected officials.

(Ords. 24499, 24577, 25257, 26440, 27290.)

12.06.820 Mayor's officeholder accounts.

A. Contributions to the mayor's officeholder account are limited to five hundred dollars per calendar year from any person and may not be collected during the officeholder freeze period.

B. The contributions to the mayor's officeholder account are limited to fifty thousand dollars in the aggregate within any calendar year.

(Ords. 24499, 24577, 25257, 25446, 25447, 26440, 27290.)

12.06.830 Mayor's officeholder account uses.

A. Officeholder contributions are not campaign contributions for purposes of this chapter. Such contributions are solely intended to facilitate the performance of the incumbent officeholder. Any use for the mayor's campaign purposes or expenditures in connection with any election by the Mayor for elective office is prohibited.

B. Expenditures from the mayor's officeholder account may be made for any political, legislative, governmental or other lawful purpose. Such expenditures include but are not limited to expenditures for fund-raising for the officeholder account; expenditures of donations to tax-exempt charitable, civic or service organizations; contributions or expenditures to support or oppose candidates seeking election to an office other than an elective city office; and contributions or expenditures to support or oppose ballot measures.

C. Contributions shall not be expended directly for salaries of the mayor's office personnel. However, funds may be donated to the city of San José and appropriated by the city council for the mayor's office personnel.

(Ords. 24499, 24577, 25257, 26440, 27290.)

12.06.840 Councilmember officeholder accounts.

A. Contributions to councilmember officeholder accounts are limited to two hundred fifty dollars per calendar year from any person and may not be collected during the officeholder account freeze period.

B. The contributions to the officeholder account are limited to ten thousand dollars aggregate within any calendar year.

(Ord. 27290.)

12.06.850 Mayor and councilmember officeholder account freeze period.

The officeholder account freeze period is the period from the beginning date of the campaign contribution collection period for any office for which the officeholder is eligible to run until the election is ended or the candidacy is formally withdrawn.

(Ords. 25446, 25447, 26440, 27290.)

12.06.860 Councilmember officeholder account uses.

A. Councilmember officeholder contributions are not campaign contributions for purposes of this chapter. They are solely intended to be used to facilitate the performance of the incumbent officeholder. Any use for campaign purposes is prohibited.

B. Councilmember officeholder funds are to be used exclusively for officeholder expenses and constituent services, including but not limited to newsletter expenses, subscribing to publications, taking constituents to dinner to discuss city business, defraying the cost of trips made in connection with the discharge of official duties and attending community events.

C. Contributions shall not be expended directly for salaries of a councilmember's or mayor's office personnel. However, funds may be donated to the city of San José and appropriated by the city council for office personnel.

(Ord. 27290.)

12.06.870 Restrictions on officeholder accounts.

A. No officeholder or controlled committee of the officeholder may solicit or accept contributions for the purpose of paying officeholder expenses during the officeholder account freeze period.

B. No expenditures shall be made from an officeholder account during an officeholder account freeze period, except that nothing herein shall preclude the payment of obligations incurred for services or goods received prior to the officeholder account freeze period.

C. For purposes of this part, the officeholder account freeze period does not apply to:

1. Officeholders who are ineligible to run for any city office during the officeholder account freeze period; and

2. Officeholders who have made a final determination not to run for any city office during the election cycle and have filed a statement of noncandidacy for city office with the office of the city clerk. Until such statement is filed, no expenditures shall be made from an officeholder account during the officeholder account freeze period.

(Ords. 24499, 24577, 25257, 25446, 25447, 26440, 27290.)

12.06.880 Prohibition on other officeholder accounts.

A city officeholder, and any person or committee on behalf of a city officeholder, is hereby prohibited from establishing an officeholder account or an account established under the Political Reform Act for the solicitation and expenditure of officeholder funds, except as provided in this chapter. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

(Ord. 27290.)

12.06.890 Officeholder disclosure.

Reporting and disclosure of the mayor's officeholder account and the councilmember officeholder accounts shall be done in accordance with the requirements of the Political Reform Act, (California Government Code Sections 81000 et seq. as amended) and the San José Municipal Code.

(Ords. 24499, 24577, 25257, 26440, 27290.)

Part 9

CAMPAIGN DISCLOSURE

Sections:

12.06.910 **Statements and reporting requirements.**

12.06.920 **Duties of the city clerk.**

12.06.930 **Disclosure of post-election payment agreements.**

12.06.910 Statements and reporting requirements.

A. Each candidate and each committee, except committees whose sole purpose is to support or oppose a ballot measure, shall file, as a public record with the city clerk, cumulative itemized reports at the times specified herein showing the total amounts of contributions accepted and expenditures made. The required statements may be completed on campaign statement forms required to be filed by the regulations of the fair political practices commission so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. Such statements shall contain a declaration by the candidate or committee treasurer that the candidate or committee has neither accepted nor solicited any campaign contribution in excess of the limitations of this chapter.

B. The listing of contributions shall include all contributions accepted during the campaign contribution collection periods specified in this chapter including all amounts less than one hundred dollars.

C. The first and second campaign statements shall be filed at the times prescribed for pre-election statements by the Political Reform Act. The second statement shall in addition include all contributions accepted through the end of campaign contribution collection period specified in Section 12.06.290.

D. Thereafter, semi-annual statements shall be filed in the form and at the times required by the regulations of the fair political practices commission.

(Ords. 24499, 24577, 24733, 25257, 26440.)

12.06.920 Duties of the city clerk.

A. The city clerk shall, five days prior to the election, prepare a report to be published in the *San José Mercury News*. The report shall contain the total contributions and expenditures for each of the candidates and for each independent committee. The clerk shall cause the report to be published two days prior to the election.

B. In the event the city clerk has reason to believe a late contribution has not been reported, the clerk shall notify the ethics board.

(Ords. 24499, 24577, 25257, 26440.)

12.06.930 Disclosure of post-election payment agreements.

A. A candidate or his or her controlled committee must disclose, on a form provided by the city clerk, any campaign-related agreements entered into by the candidate or controlled committee which provide for post-election payments. Such agreements include, but are not limited to, contingency payment or “bonus” payment plans offered by campaign consultants and agreements with persons who will receive compensation after the election for campaign services performed prior to the election.

B. A post-election payment agreement must be reported on or before the filing date of the next preelection statement which must be filed after the agreement is entered into.

(Ords. 24499, 24577, 25257, 26440.)

Chapter 12.08 PROHIBITION OF GIFTS

Sections:

12.08.010 Gifts prohibited.

12.08.015 Political Reform Act requirements.

12.08.020 Gift defined.

12.08.030 Gifts not prohibited.

12.08.040 Acceptance of gifts.

12.08.050 Reporting gifts to domestic partner, spouse and children.

12.08.010 Gifts prohibited.

A. No officer or designated employee of the city or its redevelopment agency shall accept any gift, directly or indirectly, from any person who is subject to the decision-making or recommending authority of such officer or employee, except as specifically provided in this chapter.

B. “Person subject to the decision-making or recommending authority” means any individual, firm or entity whose interest or whose employer's or client's interest:

1. Has been materially affected by the work of such officer or employee within the two years prior to the time the gift is given; or
2. In the future could reasonably be foreseen to be materially affected by the work of such officer or employee.

(Ords. 24499, 27258.)

12.08.015 Political Reform Act requirements.

A. The reporting and disclosure of gifts shall be done in accordance with the requirements of the Political Reform Act, California Government Code Section 81000 et seq., as amended, and the requirements in this chapter.

B. The gift limitations and disqualification requirements under the political reform act are applicable to gifts which are not prohibited by this chapter.

(Ord. 27258.)

12.08.020 Gift defined.

“Gift” means a voluntary transfer of any thing, service, payment or value to the extent that legal consideration of equal or greater value is not received.

A. As used in this chapter, the term “gift” includes:

1. Any rebate or discount in the price of any thing of value unless the rebate or discount is

made in the regular course of business to members of the public.

2. An officer's or employee's community property interest, if any, in a gift received by that individual's spouse.

3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.

B. As used in this chapter, the term "gift" does not include:

1. Campaign contributions which otherwise comply with Title 12 of the San José Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.

2. Any devise or inheritance.

(Ords. 24499, 27258.)

12.08.030 Gifts not prohibited.

This chapter does not prohibit those gifts which strictly fall within the exceptions enumerated herein:

A. Gifts with a value less than fifty dollars: Gifts, including meals and beverages provided to an officer or employee in a business or social setting, that have a value less than fifty dollars, as long as the total value of all such gifts received from any one donor do not exceed fifty dollars in any calendar year.

B. Informational material: Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. Informational material does not include provision of educational trips including transportation, accommodation and food.

C. Hospitality: Gifts of hospitality involving food, beverages or occasional lodging provided to any officer or designated employee by an individual in such individual's primary residence.

D. Reciprocal gifts: Gifts exchanged between any officer or designated employee and an individual, other than a lobbyist as defined in Chapter 12.12, on holidays, birthdays, baby showers, or similar occasions provided that the presents exchanged are not substantially disproportionate in value.

E. Panels and seminars: Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.

F. Admission given by sponsor of an event: Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee. For example, cultural events include theatrical productions and art exhibits; political events include political fund raisers.

1. Admission to regularly scheduled athletic events, such as tickets to professional sporting events, are not included as an exception to prohibited gifts.

2. A sponsor of an event shall not include individuals, persons or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets.

G. Employment interview - government employer: Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental agency in connection with an employment interview, when the interview is conducted at least one hundred fifty miles from San José and where the situs of the employment will be at least the same distance from the city.

H. Employment interview - private employer: Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bona fide prospect of employment, when the expenses are advanced or reimbursed to an officer or designated employee by a potential employer, provided that the officer or designated employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.

I. Authorized travel: Transportation, accommodation, food and directly related expenses for any officer or designated employee which has been authorized by a majority of the city council or redevelopment agency board or which is pursuant to a written city or redevelopment agency policy for intrastate or interstate travel regardless of the source of payment.

J. City or redevelopment agency business: Transportation provided to an officer or designated employee by a contractor or other person doing business with the city or redevelopment agency, provided that such transportation is related to city or redevelopment agency business which is within the scope of employment or the duties of such officer or designated employee, and further provided that such transportation is not in excess of one hundred twenty-five miles one way. Nothing in this subsection shall be interpreted to limit the city council's or redevelopment agency board's discretion to approve travel under subsection I. above.

K. Flowers: Flowers, plants or balloons which are given on ceremonial occasions, to express condolences or congratulations, or to commemorate special occasions.

L. Prizes and awards from bona fide competitions: A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a city or redevelopment agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirements under the Political Reform Act of 1974, as amended.

M. Wedding gifts: Wedding gifts from an individual other than a lobbyist as defined in Chapter 12.12.

(Ords. 24499, 27258.)

12.08.040 Acceptance of gifts.

A gift shall be deemed to have been accepted except where:

A. It is not used, and, within thirty days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

B. It is treated as and remains the property of the city or the redevelopment agency.

C. It is received by an officer or designated employee in his or her official capacity or as a representative of the city or redevelopment agency, is reported to the city council or agency board, and the council or board approves the retention.

(Ords. 24499, 27258.)

12.08.050 Reporting gifts to domestic partner, spouse and children.

A. At the time of filing the annual disclosure statement required by the political reform act or any applicable conflict-of-interest code, each city and redevelopment agency officer and designated employee shall file a family gift report on a form to be provided by the city clerk.

B. The officer or designated employee shall indicate on such report any gifts known to have been accepted during the relevant reporting period by such officer's or employee's domestic partner, spouse and any dependent child where such gifts would have been prohibited to the officer or employee. The value of any such gift and the donor must be disclosed. If the officer or employee has no knowledge of any such gift having been received, the report shall so state.

C. For purposes of this section, "domestic partner" shall mean any person registered as a domestic partner by an employee with the city of San José.

(Ords. 24499, 27258.)

Chapter 12.10 REVOLVING DOOR RESTRICTIONS

Sections:

- [12.10.010](#) Purpose.
- [12.10.020](#) Definitions.
- [12.10.030](#) Prohibitions.
- [12.10.040](#) Prohibition for former commission members.
- [12.10.050](#) Exceptions.
- [12.10.060](#) Applicability.
- [12.10.070](#) Waiver.
- [12.10.080](#) Enforcement.
- [12.10.090](#) Penalties.

12.10.010 Purpose.

The purposes of this chapter are:

A. To assure the independence, impartiality and integrity of city and agency officials and designated employees in making governmental actions and decisions.

B. To prevent such former officials and designated employees from using their positions with the city or agency for personal gain.

C. To prevent private for-profit business entities from obtaining a perceived unfair advantage in dealing with the city or agency by hiring former officials and designated employees.

(Ords. 24499, 24523, 27271.)

12.10.020 Definitions.

For purposes of this chapter, the terms below shall have the following meaning:

A. "Agency official" shall mean the chairperson and members of the board of directors of the

redevelopment agency of the city of San José.

B. "City official" shall mean the mayor and city councilmembers.

C. "Commission" shall mean any body created by the city council or agency board whose members are required to file statements of economic interest pursuant to the fair political practices commission.

D. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).

E. "Nonprofit organization" shall mean an entity which would qualify as such under the federal Internal Revenue Code and has engaged in programs or projects which have received financial or other formal support from the city council or redevelopment board within the past five years.

F. "Transitional services" shall mean services involving technical or specialized knowledge required to complete a project or to provide temporary consulting services to the city or the agency.

G. "Work" shall mean any activity for which compensation is received from any source, including compensation received as an independent contractor. "Work" includes the supervision or direction of others performing work, except as provided in Section 12.10.050. "Work" for the city or agency also includes any action of any sort whatsoever taken in one's official capacity. Service by a city or agency official or designated employee on any type of board, committee or similar body as a representative of the city or agency is deemed to be work for the city or agency.

(Ords. 24499, 24523, 27271.)

12.10.030 Prohibitions.

For one year immediately following the termination of city or agency office or employment, no former city or agency official or designated employee shall:

A. Work on any legislative or administrative matter on which the official or employee worked on behalf of the city or agency during the twelve months prior to termination of service, or which was within the former city or agency official's or designated employee's area of job responsibility. For example, "work on any legislative or administrative matter" includes providing advice or recommending any action with regard to a city or agency legislative or administrative matter such as a land use, development or public works project. Legislative matters include city council, agency board and city board or commission actions related to ordinances, resolutions, agreements, permits or licenses.

B. Represent anyone else, whether or not for compensation, before the city council, redevelopment agency board, any commission thereof, or any staff of the city or agency.

C. Receive any gift or payment which would be prohibited under Part 5 of this chapter from any person who was, in any way, involved in or affected by the work of the official or employee during the twelve months prior to the termination of service.

(Ords. 24499, 24523, 27271.)

12.10.040 Prohibition for former commission members.

A former member of a commission shall not represent anyone else, whether or not for compensation, before the commission on which the former member served, for a period of one year immediately following the termination of service on that commission. No other provisions

of this chapter shall apply to persons serving on a commission who are not otherwise city or agency officials or designated employees.

(Ords. 24499, 24523, 27271.)

12.10.050 Exceptions.

The following work shall not be subject to the prohibitions of Section 12.10.030:

A. As an employee or volunteer of a nonprofit organization, as defined in Section 12.10.020.E.;

B. As an employee of a government entity;

C. As an independent contractor of the city or agency where it has been determined that it is in the best interest of the city or agency to retain the former official or employee to provide transitional services. Such determination shall be made by the person or body authorized to enter into such a contract. In such event, the city or agency shall contract directly with the former official or employee. The rate of compensation for such services shall not exceed the former official's or employee's rate of pay, including benefits, at the time city or agency service terminated.

(Ords. 24499, 24523, 27271.)

12.10.060 Applicability.

A. The provisions of this chapter shall not apply to prevent a former city or agency official or designated employee from testifying as a percipient witness in any legal proceeding.

B. The provisions of this chapter shall not apply to prevent a former city or agency officer or designated employee from working as a supervisor of a person or persons performing work that would be prohibited by this chapter, so long as the supervisor is screened from any personal participation in the work and receives no part of the fee therefrom.

(Ords. 24499, 24523, 27271.)

12.10.070 Waiver.

The city council or redevelopment agency board of directors may waive the prohibitions of Section 12.10.030, upon full disclosure of the facts surrounding the proposed activity, if the council or board finds that such waiver is in the best interest of the city or agency and that such waiver is not inconsistent with the purposes of this chapter as set forth in Section 12.10.010.

(Ords. 24499, 24523, 27271.)

12.10.080 Enforcement.

A. The city attorney may conduct inquiries or investigate complaints of violations of this chapter. The city attorney may seek judicial or injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this chapter.

B. A city or agency official, designated employee or person who is subject to the provisions of this chapter may request a formal written opinion from the city attorney and may reasonably rely on such advice in order to comply with the requirements of this chapter. Before such opinion is rendered, such official or employee shall fully cooperate with the city attorney in disclosing facts and information in order to prepare the formal opinion.

C. Any person may file a complaint with the city clerk alleging a violation of this chapter

with the elections commission.

D. The city attorney may put persons on notice of a potential violation of the requirements of this chapter, whether or not a complaint is filed with the elections commission.

(Ords. 24499, 24523, 27271.)

12.10.090 Penalties.

Violations of this chapter may result in civil penalties of up to five thousand dollars for each violation. The city of San José or the redevelopment agency shall be entitled to recover from any former city or agency official or designated employee the monetary value of any compensation or thing of value provided to such person in violation of the provisions of this chapter.

(Ord. 27271.)

Chapter 12.12 SAN JOSÉ MUNICIPAL LOBBYING

Parts:

- 1 Title and Purpose**
- 2 Definitions**
- 3 Exceptions**
- 4 Requirements**
- 5 Enforcement and Prohibitions**

PART 1

TITLE AND PURPOSE

Sections:

12.12.010 Title and purpose.

12.12.010 Title and purpose.

A. This chapter shall be known as the San José Municipal Lobbying Ordinance.

B. Purpose and goals: This chapter is intended to achieve the following purposes and goals:

1. To guarantee to the residents of the city that the city of San José (city) continues the highest ethical work environment for the residents of the city and the city's elected officials and employees.

2. In the spirit of open and transparent government, to allow the public to know and better understand the relationship between its elected officials and lobbyist's clients.

3. To enhance public confidence and trust with respect to lobbyist activities and city practices.

4. To ensure that the requirements of this chapter and their implementation are responsive to the goal of making it easy to do business with the city.

5. To bring about clarity and certainty about applicable provisions among stakeholders.

6. To establish a policy that sets clear standards of conduct.

7. To maintain the citizen's constitutional right to petition government for redress of grievances and not to limit the public's access to their elected officials.

(Ord. 27221.)

PART 2 DEFINITIONS

Sections:

- [12.12.100](#) **Definitions.**
- [12.12.110](#) **Activity expense.**
- [12.12.120](#) **At the behest.**
- [12.12.130](#) **City official.**
- [12.12.140](#) **City official-elect.**
- [12.12.150](#) **Client.**
- [12.12.160](#) **Contact.**
- [12.12.170](#) **Compensated or compensation.**
- [12.12.180](#) **Lobbying.**
- [12.12.190](#) **Lobbyist.**
- [12.12.210](#) **Person.**

12.12.100 Definitions.

For purposes of this chapter, the following definitions shall be applicable. Other terms used in this chapter shall have the meanings set forth in the California Political Reform Act of 1974, as amended. (Ord. 27221.)

12.12.110 Activity expense.

“Activity expense” means any payment made by a lobbyist to or directly benefiting any city official, city official-elect or member of such official's or official-elect's immediate family and domestic partners. Activity expenses include gifts, honoraria, consulting fees, salaries and any other form of compensation, but do not include campaign contributions.

(Ord. 27221.)

12.12.120 At the behest.

“At the behest” means at the specific direction of, or at the personal request or suggestion of, or with the express prior consent of, any elective city official, city official-elect or candidate for elective city office.

(Ord. 27221.)

12.12.130 City official.

“City official” includes the mayor and members of the city council, any appointee of the city council, mayoral or council staff member, redevelopment agency board member, members of the planning commission, appeals hearing board, civil service commission, any city representative to

any joint powers authority to which the city is a party, the city manager and his or her assistant city manager and deputy city managers and the executive director of the agency and his or her assistant and deputies and city and agency department heads.

(Ord. 27221.)

12.12.140 City official-elect.

“City official-elect” means a person who has been elected to a city office but has not yet been sworn in to office.

(Ord. 27221.)

12.12.150 Client.

“Client” means a person who compensates a lobbyist for representation.

(Ord. 27221.)

12.12.160 Contact.

“Contact” means any direct communication, whether orally, electronically or in writing, including, without limitation, communication through an agent, associate or employee, for the purpose of influencing or attempting to influence legislative or administrative action.

(Ord. 27221.)

12.12.170 Compensated or compensation.

“Compensated or compensation” means any economic consideration for services rendered or to be rendered in the future, including, without limitation, promises to perform or provide services, contractual arrangements, contingency fees, success fees, bonuses or awards.

(Ord. 27221.)

12.12.180 Lobbying.

“Lobbying” means influencing or attempting to influence a city official or city official-elect with regard to a legislative or administrative action of the city or redevelopment agency.

A. “Influencing” means the purposeful communication, either directly or through agents, for the purpose of promoting, supporting, modifying, opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions of a city official or city official-elect, by any means, including, but not limited to providing or using persuasion, information, incentives, statistics, studies or analyses.

B. “Legislative action” means the drafting, introduction, consideration, modification, enactment or defeat of any resolution, ordinance, amendment thereto, report, nomination or other action of the mayor, city council, redevelopment agency of the city, or city board or commission, or task force or any joint powers authority of which the city is a party.

C. “Administrative action” means the proposal, drafting, development, consideration, advocacy, recommendation, adoption, amendment or approval of any rule, regulation, agreement or contract, permit, license or hiring action.

(Ord. 27221.)

12.12.190 Lobbyist.

“Lobbyist”, unless exempt under Section 12.12.300 means:

A. “Lobbyist (contract).” An individual who engages in lobbying on behalf of one or more clients (acting individually or through agents, associates, employees or contractors) and who has received or has entered into an agreement for compensation of one thousand dollars or more (“threshold compensation”) for any services which includes engaging in lobbying during any consecutive three-month period.

B. “In-house lobbyist”:

1. An individual who is an officer or employee of an organization or association which has a membership and for which the officer or employee is compensated for purposes of advancing the goals or mission of the umbrella organization or association, such as a trade association, and who engages in lobbying on its behalf in an aggregate amount of twenty hours or more within any three-month period; or

2. An individual who is an owner of a business or employed by a business or organization and who is compensated more than one thousand dollars in a month beyond reimbursement for their reasonable travel, meals or incidental expenses for engaging specifically in lobbying, and whose duties as an employee include lobbying on behalf of his or her employer, and who engages in lobbying on its behalf in an aggregate amount of twenty hours or more within any three-month period.

C. “Expenditure lobbyist.” A person who makes payments or incurs expenditures of five thousand dollars or more during any calendar year in connection with carrying out public relations, advertising or similar activities with the intent of soliciting or urging, directly or indirectly, other persons to communicate directly with any city official in order to attempt to influence a legislative or administrative action. The five- thousand-dollar threshold shall not include:

1. Compensation paid to contract lobbyists or employees for lobbying; or

2. Dues payments, donations, or other economic consideration paid to an organization, regardless of whether the dues payments, donations or other economic consideration are used in whole or in part to lobby.

(Ord. 27221.)

12.12.210 Person.

“Person” means any individual, business entity, trust, corporation, association, committee, or any other organization or group of persons acting in concert.

(Ord. 27221.)

PART 3 EXCEPTIONS

Sections:

12.12.300 Exceptions.

12.12.300 Exceptions.

The following persons are exempt from the requirements of this chapter:

- A. A public official acting in his or her official capacity.
- B. A person engaged solely in publication or broadcasting of news items, editorials, or commentary which directly or indirectly urges governmental action.
- C. A person hired by the city or agency for work performed on behalf of the city or agency, or a person who prepares documents for approval by the city under the California Environmental Quality Act of 1970, as amended, and Title 21 of the San José Municipal Code, or a person who has been specifically invited by the city council or redevelopment agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the city or the redevelopment agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony in aid of the body or person extending the invitation or invited to attend a meeting, such as a city or agency task force or department committee meeting, to provide information or assistance requested by city or agency staff.
- D. A person who, without additional compensation and not as part of, or in the ordinary course of his or her regular employment, appears to present the position of an employer or organization, such as a taxpayers' association or trade association, when that employer, association or organization has one or more of its officers, employees or representatives already registered as a lobbyist under the provisions of this chapter.
- E. A person whose attempts to influence governmental action are limited to:
 - 1. Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public;
 - 2. Preparing, processing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public.
- F. Any person whose sole activity includes one or more of the following:
 - 1. To submit a bid on a competitively bid contract;
 - 2. To submit a written response to a request for proposals or qualifications;
 - 3. To participate in an oral interview for a request for proposals or qualifications; or
 - 4. To negotiate the terms of a contract or agreement with the city, once the city has authorized either by action of the city council, city manager, or voters, entering an agreement with that person, whether that person has been selected pursuant to a bid, request for proposals or qualifications, or by other means of selection recognized by law.
- G. A person who meets with city officials solely to lodge "whistleblower" complaints relating to improper governmental activity such as gross mismanagement, waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- H. A person who meets with the city attorney or city clerk regarding any claim or litigation matter, negotiation of any agreements where the city is a party or the requirements or interpretation of this chapter.
- I. Uncompensated members or uncompensated members of the board of directors of nonprofit organizations.
- J. Members of neighborhood associations, neighborhood advisory committees or project area committees.

K. Persons whose communications are solely related to:

1. The establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or a memorandum of agreement between the city and a recognized employee organization.

2. Management decisions as to the working conditions of represented employees that clearly relate to the terms of a collective bargaining agreement or memorandum of agreement between the city and a recognized employee organization.

3. Proceedings before the city of San José civil service commission.

L. A person whose communications with city officials are solely in connection with the administration of an existing contract or agreement between the person and the city or redevelopment agency.

(Ords. 24499, 27221.)

PART 4 REQUIREMENTS

Sections:

12.12.400 **Registration with city clerk.**

12.12.410 **Required registration information.**

12.12.420 **Additional required information and disclosures.**

12.12.430 **Quarterly reports.**

12.12.440 **Registration fees.**

12.12.400 Registration with city clerk.

A. A lobbyist is required to register with the city clerk no later than ten days after qualifying as a lobbyist as defined in this chapter.

B. A lobbyist shall renew his or her registration by January 15 of each year unless status as a lobbyist has terminated.

C. After initial registration, annual registration renewal shall not be required if a declaration attesting to the termination of lobbying services within the city has been filed with the city clerk no later than January 15.

(Ords. 24499, 27221.)

12.12.410 Required registration information.

A. The initial registration report for lobbyists shall contain the name, business address, telephone and fax numbers of all persons required to register under this chapter, including the names of all owners of sole proprietorships and partnerships of fewer than five persons.

B. If the registrant is a corporation, it shall also include the names of the officers and agent for service of process, if any.

C. Any business or organization registering under this chapter shall also describe the nature of its business or organization in sufficient detail to inform the reader of the nature and purpose of the business.

D. The registration report shall contain the following:

1. The name, business address, telephone number of each client, the nature of each client's business and a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence on behalf of the client; and the name of each person employed or retained by the lobbyist to lobby on behalf of each client.

2. Lobbyist information shall also include the names of all owners, officers and employees conducting lobbying activities and a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence.

3. Expenditure lobbyist information shall also include a brief description of the legislative or administrative action the lobbyist is seeking to influence.

4. Lobbyists who are individuals, including in-house lobbyists, shall also describe the nature of the business, organization or association which employs or compensates the lobbyist and include a brief description of the legislative or administrative action the lobbyist is seeking to influence.

(Ord. 27221.)

12.12.420 Additional required information and disclosures.

The initial lobbyist registration shall also contain the following information:

A. Campaign and officeholder contributions to an elected city official or candidate for city office made during the preceding calendar quarter.

B. Campaign and officeholder contributions made at the behest of an elected city official or candidate to any other elected public official or candidate for public office during the preceding calendar quarter.

C. All independent expenditures made for or on behalf of a city official or candidate for city office made during the preceding calendar quarter.

D. Fund-raising activity for any city official, candidate for elective city office or any controlled committee of the elected city official or candidate for city office or for any political action committee, political party or candidate for elective office of a governmental organization made at the behest of a city official during the preceding calendar quarter.

E. Donations to for-profit or nonprofit organizations made at the behest of a city official or candidate for elective city office of any contribution or payment of more than one thousand dollars in the aggregate, made during the preceding calendar quarter.

F. Payments received for services as a consultant or in any other capacity for services rendered to any city department or redevelopment agency, city official, or any city official-elect, their controlled committees or officeholder committees.

G. Contacts made with city officials or city officials-elect during the preceding calendar quarter for the purpose of influencing or attempting to influence legislative or administrative action. Contact information shall include a brief description of the item(s) of legislative or administrative action the lobbyist is seeking to influence and the number of contacts in the following ranges: (1), (2-5), (6-10) or (11 or more).

H. Activity expenses such as payments that directly benefits any city official, city official-elect or member of his or her immediate family or domestic partner made during the preceding calendar quarter.

(Ord. 27221.)

12.12.430 Quarterly reports.

A. For each calendar quarter following the quarter in which the lobbyist was required to register, the lobbyist must file a quarterly report with the city clerk not later than fifteen calendar days after the end of the qualifying quarter on March 31, June 30, September 30 and December 31, whether or not any lobbying activities have occurred during such period. Electronic reporting may also be permitted by the city clerk.

B. Each quarterly report shall contain the same information as required to be disclosed in the initial registration, for those activities occurring in that quarter. If a lobbyist has terminated all lobbying activities during such quarter, the lobbyist may file a declaration of termination with the quarterly report. The final quarterly report shall include disclosure of any lobbying activities during the quarter of termination.

C. Each quarterly report for lobbyists (contract) shall indicate the total economic compensation promised or received from each client listed during the reporting period for lobbyist services in accordance with the following ranges: (\$500 - \$1,000), (\$1,001 - \$10,000), (\$10,001 - \$100,000), and (over \$100,000).

D. Quarterly reports shall be filed by April 15, July 15, October 15 and January 15 for the prior calendar quarter, and are delinquent thereafter.

E. Records pertaining to the registration and quarterly reports shall be preserved by the lobbyist for inspection and audit by the city for a period of five years from the date of production.

(Ord. 27221.)

12.12.440 Registration fees.

Persons subject to the registration requirements of this chapter shall pay an annual fee as set forth in the schedule of fees, established by resolution of the city council. Individuals within the same business entity who qualify as lobbyists under the provisions of Section 12.12.190 are each subject to this fee. Persons, or individuals within the same business entity, registering for the first time on or after June 30 of a given year, shall pay a reduced registration as set forth in the schedule of fees.

A. The applicable registration fee is due at the time of registration or registration renewal. Payment will be deemed delinquent thereafter. Delinquency fees as set forth in the schedule of fees may be assessed as specified in Subsection C. below, if payment occurs after the due date.

B. In addition to the annual fee, each registrant shall pay a fee per client for whom lobbying is undertaken for compensation in excess of five hundred dollars as set forth in the schedule of fees. The fees for clients as of the date of initial registration shall be submitted with the registration. The fees for subsequent clients will be due and submitted at the time of submission of the relevant quarterly report as required in this chapter. Lobbyists for umbrella organizations or associations such as a trade association will not be assessed a client fee based solely on compensation derived from fees paid by members based on their membership with such organization or association.

C. A fine as set forth in the schedule of fees for delinquent fees, up to a maximum of one hundred percent of the unpaid fees, will be assessed until the registration fees and the fines are paid in full.

D. A fine for delinquent quarterly reports, as set forth in the schedule of fees, will be assessed until the quarterly reports are filed with the city clerk.

(Ord. 27221.)

PART 5 ENFORCEMENT AND PROHIBITIONS

Sections:

- 12.12.500** **Noncompliance - order to show cause.**
- 12.12.510** **Prohibitions.**
- 12.12.520** **Lobbyist recommendation prohibition.**
- 12.12.530** **Compliance and training.**
- 12.12.540** **Enforcement.**
- 12.12.550** **Penalties.**

12.12.500 Noncompliance - order to show cause.

A. Upon the written request of any city official, the city clerk shall issue an order to show cause to any unregistered person.

B. Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the elections commission that he or she has complied with the registration requirement or is exempt from registration.

C. If the elections commission determines that such person is subject to registration and he or she fails to register within seven days of that determination, such person shall be barred from appearing before city council or the redevelopment agency board, except at a public hearing on his or her own behalf or on oral petition. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

(Ords. 24499, 27221.)

12.12.510 Prohibitions.

It shall be unlawful for any lobbyist to commit any one of the following acts:

A. Engage in any activity on behalf of a client as a lobbyist or accept compensation as a lobbyist unless such lobbyist is registered and has filed the information required by this chapter.

B. Doing any act with the express purpose and intent of placing any city official or immediate family member of a city official under personal or financial obligation, such as a loan or similar obligation, to such lobbyist.

C. Intentionally deceive or attempt to deceive a city official as to any material fact which is pertinent to any pending or proposed legislative or administrative action.

D. Contact any public official in the name of any non-existent person or in the name of any existing person, except with the consent of such existing person.

E. Represent, either directly or indirectly, orally or in writing that the lobbyist can control or obtain the vote or action of any city official.

F. Perform services for a client on a matter, including any legislative action or administrative action for a period of one year after which the lobbyist had performed services on such matter as a consultant for the city of San José or redevelopment agency.

G. Contact members of an evaluation team or panel for a city or redevelopment agency

request for proposal or request for qualifications concerning a city or redevelopment agency request for proposal or request for qualifications, other than a city or agency designated contact person, during the period of time from the release to prospective proposers of the request for proposal or request for qualification until a recommendation is made public by the city or agency.

(Ord. 27221.)

12.12.520 Lobbyist recommendation prohibition.

City officials are prohibited from suggesting, advising or recommending that a person obtain the services of a lobbyist or recommend the name of a particular lobbyist to facilitate favorable legislative or administrative action by the city or redevelopment agency with regard to such person's matter pending before the city or redevelopment agency.

(Ord. 27221.)

12.12.530 Compliance and training.

A. The city clerk shall oversee compliance with this chapter, including the creation of all forms and explanatory materials.

B. A training workshop shall be established for elected city officers and lobbyists on city ethics ordinances and a code of ethics for lobbyists. The city clerk shall establish a program of required attendance on a regular basis not less than once every three years. Training workshops shall be provided to newly elected city officials.

(Ord. 27221.)

12.12.540 Enforcement.

A. The city attorney may investigate complaints of violations of this chapter. The city attorney may seek judicial or injunctive relief in the courts to enjoin violations of or to compel compliance with the provisions of this chapter.

B. Any person may file a complaint with the city clerk alleging a violation of this chapter with the elections commission.

C. The city attorney or the city clerk may put lobbyists on notice of a potential violation of the requirements of this chapter, whether or not a complaint is filed with the elections commission.

(Ord. 27221.)

12.12.550 Penalties.

In addition to the fines which may be assessed pursuant to Section 12.12.440, violations of this chapter may result in civil penalties of up to five thousand dollars for each violation, or the amount of the compensation received for the lobbying activity, whichever is greater, may be assessed by the elections commission or a court of law.

(Ord. 27221.)

Chapter 12.14 CONCURRENT EMPLOYMENT OF CITY COUNCIL MEMBERS OR CITY OR AGENCY EMPLOYEES

Sections:

12.14.010 Disclosure of concurrent employment.

12.14.010 Disclosure of concurrent employment.

A. Any employer shall disclose concurrent employment, in any capacity, of any officer of the city, redevelopment agency or any full-time employee of the city or agency when:

1. The employer is a local governmental lobbyist; or
2. The employer is a client of a lobbyist, who made the offer of employment based on the request or recommendation of the lobbyist and with knowledge that such employment was concurrent.

B. Within ten days after such concurrent employment commences, such employer shall file a statement with the city clerk, setting out the nature of the employment, the name of the person so employed, the amount of pay or consideration to be paid, and the date such employment commenced.

(Ord. 24499.)

Chapter 12.15 PROSPECTIVE EMPLOYMENT

Sections:

12.15.010 Persons subject to the chapter.

12.15.020 Prospective employers.

12.15.030 Prospective employment.

12.15.040 Applicability.

12.15.050 Negotiation disclosure requirement.

12.15.060 Employment offer disclosure and attestation requirements.

12.15.070 Participation prohibition.

12.15.080 Confidentiality.

12.15.010 Persons subject to the chapter.

A. The negotiation disclosure provisions of this chapter as set forth in Section 12.15.050 shall apply to the following groups:

1. Elected officers;
2. Council appointees and the executive director of the redevelopment agency;
3. Directors of city departments, assistant city managers, and deputy city managers;
4. Assistant directors to council appointees and assistant redevelopment agency executive director.

B. The employment offer disclosure and attestation requirements of this chapter as set forth in Section 12.15.060 shall apply to the following persons:

1. Board and commission members;

2. Managers who are determined by their appointing authority to exercise critical decision making or program management responsibility;
3. Council assistants; and
4. Redevelopment agency senior staff.

(Ord. 25340.)

12.15.020 Prospective employers.

A. For purposes of this chapter, prospective employers include individuals, firms, companies, organizations, private and public agencies, excepting only the city and the redevelopment agency.

B. Prospective employer includes not only the employing entity, but also all principals of that entity including all persons with ownership interests in that entity.

(Ord. 25340.)

12.15.030 Prospective employment.

A. For purposes of this chapter, with regard to persons listed in subsection A. of Section 12.15.010, prospective employment includes offers, discussions, negotiations or agreements with regard to future employment, with any prospective employer, except for offers received which are rejected immediately upon being made.

B. For purposes of this chapter, with regard to persons listed in subsection B. of Section 12.15.010, prospective employment includes offers or agreements with regard to future employment, with any prospective employer, except for offers received which are rejected immediately upon being made.

(Ord. 25340.)

12.15.040 Applicability.

A. This chapter shall apply to prospective employment where it is reasonably foreseeable that the financial interests of the prospective employer could be materially impacted or affected, in a manner different from that of the public-at-large, by the decisions influenced or made by the person subject to this chapter or any issues or matters before the city which are being actively lobbied by the prospective employer could be influenced or affected by the person subject to this chapter.

(Ord. 25340.)

12.15.050 Negotiation disclosure requirement.

A. Any person subject to subsection A. of Section 12.15.010 of this chapter who is entertaining offers, discussion or negotiations or who has an agreement for prospective employment with an applicable prospective employer shall file a prospective employment disclosure statement on a form provided by the city attorney.

B. A copy of the prospective employment disclosure statement shall be filed with the city attorney within three working days following the occurrence of prospective employment as defined in Section 12.15.030 above.

C. In addition, a copy of the prospective employment disclosure statement must be filed simultaneously with the notification recipient designated below.

1. The notification recipient for council appointees and the executive director of the redevelopment agency shall be the mayor.

2. The notification recipient for all others shall be their appointing authority.

D. The disclosure requirements in this section shall not apply to any client or prospective client of a councilmember, where the identity of a client is actually and legally required to be maintained as confidential.

(Ord. 25340.)

12.15.060 Employment offer disclosure and attestation requirements.

A. Any person subject to subsection B. of Section 12.15.010 of this chapter who has received an offer for prospective employment with an applicable prospective employer shall file a prospective employment disclosure statement on a form provided by the city attorney.

B. A copy of the prospective employment disclosure statement shall be filed with the city attorney within three working days following the occurrence of prospective employment as defined in Section 12.15.030 above.

C. In addition, a copy of the prospective employment disclosure statement must be filed simultaneously with the notification recipient designated below:

1. The notification recipient for board and commission members shall be the secretary of the board or commission.

2. The notification recipient for all employees subject to this chapter shall be their appointing authority. For purposes of this provision, each member of the council shall be deemed the appointing authority for his or her assistants.

D. The disclosure requirements in this section shall not apply to any client or prospective client of a board or commission member, where the identity of a client is actually and legally required to be maintained as confidential.

E. In addition, all persons subject to this section shall sign a statement, on a form prepared by the city attorney, attesting that they will not use their city position, information or knowledge acquired in their employment with the city to influence employment offers or to advantage prospective employers who currently or potentially do business with the city. The statement shall include a commitment to avoid all appearances of conflicts of interest and avoid potential conflicts of interest. It shall be filed with the notice recipient designated in subsection C. above.

(Ord. 25340.)

12.15.070 Participation prohibition.

A. No person subject to this chapter shall participate in any decision substantially or directly involving the financial interest of a prospective employer for whom disclosure is required by this chapter or any issues or matters before the city which are being actively lobbied by such prospective employer.

B. This prohibition shall remain in full force and effect until both of the following have occurred:

1. A period of six months after all prospective employment negotiations have terminated and a final decision has been made that such employment will not occur; and

2. The city attorney and the notification recipient have been advised that consideration of

employment has been terminated.

(Ord. 25340.)

12.15.080 Confidentiality.

A. The prospective employment disclosure statement shall be maintained as confidential to the greatest extent provided by law until:

1. The person filing the statement has left city/agency employ; or
2. The participation prohibition period has ended; or
3. The person filing the statement has indicated that there is no need for confidentiality; or
4. The prospective employer has publicly disclosed the prospective employment; or

5. The city attorney determines that there is no longer justification for withholding the statement from disclosure in that the public interest served by not making the record public does not clearly outweigh the public interest served by disclosure of the statement.

B. Upon the occurrence of any of the events above, the statement shall be treated as a public record.

(Ord. 25340.)

Chapter 12.16 DISCLOSURE OF FUND-RAISING SOLICITATIONS

Sections:

12.16.010 Persons subject to the chapter.

12.16.020 Disclosure requirements— Fund-raising solicitations.

12.16.030 Fund-raising solicitation(s).

12.16.040 Reporting requirements.

12.16.050 Political reform act requirements—Informational.

12.16.010 Persons subject to the chapter.

A. The disclosure provisions of this chapter shall apply to elected officials of the city of San José who are the mayor and members of the city council and the chair and members of the San José Redevelopment Agency board of directors and their controlled committees.

B. For purposes of this chapter, "elected official" means the mayor, each member of the city council, the chair and each member of the San José Redevelopment Agency board of directors.

(Ord. 27377.)

12.16.020 Disclosure requirements—Fund-raising solicitations.

A. Each elected official and their controlled committees shall disclose any direct fund-raising solicitation(s) which resulted in a contribution or donation in any dollar amount or value, made at the behest of or at the request of, the elected official to any person or entity, including, but not limited to the following:

1. Donations of funds, goods, or services to, or, payment of funds on behalf of any religious, charitable, nonprofit, governmental or political organization, association, committee or entity, including the city of San José and the Redevelopment Agency of the city of San José;

2. Donations of funds, goods, or services to, or payment of funds on behalf of another elected official, city candidate, city ballot measure, elected public official or candidate for elective office or any other campaign committee.

B. For purposes of this chapter, "made at the behest or at the request of" means at the specific direction of or at the personal request or suggestion of, or with the express prior consent of any elected official.

(Ord. 27377.)

12.16.030 Fund-raising solicitation(s).

A. For purposes of this chapter, "direct fund-raising solicitation(s)" means:

1. A personal request, made directly by the elected official or at the behest of, the elected official or through an agent, either orally or in writing, to a person or entity that a contribution or donation be made from:

a. A person or entity who is doing business with, involved with or working on any governmental, administrative or legislative action with or before the city of San José or the San José Redevelopment Agency within one year before or after the date of the request; or

b. A person or entity who has been or may foreseeably be involved with or working on any governmental, administrative or legislative action with or before the city of San José or the San José Redevelopment Agency within one year before or after the date of the request.

2. Providing the use of the elected official's home or business to hold a fund-raising event;

3. Payment by the elected official for at least a majority of the costs of a fund-raising event.

B. "Direct fund-raising solicitation(s)" does not include:

1. A request by the elected official for funds publicly to at least a majority of persons who attend any public gathering, or by making a request that appears or is published in a newspaper, or broadcasted on radio or television; or

2. Supplying names by the elected official to be used for invitations for a fund-raising event; or

3. Recorded telephone solicitations or participation in telephone banks by the elected official; or

4. Inclusion of the elected official's name in the letterhead or in the body of a solicitation letter requesting contributions or donations but which is not sent by or signed by the elected official; or

5. Inclusion of the elected official's name in an invitation to a private event or meeting which is not hosted, co-hosted or sponsored by the elected official.

C. For purposes of this chapter, a "fund-raising event" means an event at which contributions or donations are solicited from, delivered or made by a person or entity who is doing business with, involved with or working on any governmental, administrative or legislative action with or before the city of San José or the San José Redevelopment Agency within one year before or

after the date of the request or a person or entity who has been or may foreseeably be involved with or working on any governmental, administrative or legislative action with or before the city of San José or the San José Redevelopment Agency within one year before or after the date of the request.

(Ord. 27377.)

12.16.040 Reporting requirements.

A. Elected officials shall file fund-raising disclosure reports which include the information specified in this section with the city clerk. Reports filed pursuant to this section shall be public records.

B. The disclosure reports shall include the following information:

1. Name of the elected city official;
2. Name, address, occupation and employer of the contributor or donor;
3. Date(s) of the direct fund-raising solicitation(s);
4. Brief description of the solicitation(s), behest(s) or request(s), including the dollar value or fair market value of goods or services solicited or requested; and
5. Date(s) and amount(s) of the reportable contribution(s), or donation(s) that resulted from the city official's direct request(s) as set forth in Section 12.16.030 A. 1.

C. Reports shall be filed as follows:

1. No later than July 31 for fund-raising solicitations made and reportable contributions or donations that resulted from fund-raising solicitations during the period from January 1 through June 30; and
2. No later than January 31 for fund-raising solicitations made and reportable contributions or donations that resulted from fund-raising solicitations during the period from July 1 through December 31.

D. The city clerk shall be the filing officer for the reports and will be responsible for the preparation of forms and explanatory materials.

(Ord. 27377.)

12.16.050 Political reform act requirements - Informational.

A. As of the date of enactment of this Chapter 12.16, the Political Reform Act of 1974, as amended, requires elected officials to disclose payments made at their behest for legislative, governmental or charitable purposes aggregating five thousand dollars or more from the same source in a calendar year. (California Gov. Code Section 82015(b)(2)(B)(iii)).

B. The Political Reform Act and Chapter 12.06 of the San José Municipal Code require reporting and disclosure of campaign and officeholder contributions and funds for elected officials.

C. The requirements of this Chapter 12.16 shall not apply to campaign and officeholder contributions and funds for elected officials.

(Ord. 27377.)